IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1156 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASANTLAL MORARJI KENIA

Versus

RAMILABEN ASHOKBHAI CHHEDA

Appearance:

MR ASHISH M DAGLI for Petitioner No. 1
MR CH VORA for Respondent No. 1-2
MR JASWANT K SHAH for Respondent No. 3-4
MR HS MUNSHAW for Respondent No. 5
MR DIPEN DESAI, Ld. AGP for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 29/11/2004

ORAL JUDGEMENT

1. The short facts of the case are that the petitioner applied for permission for converting the land for non-agricultural purpose and the said land is bearing

Survey No.196 at village Baroi, Taluka Mundra, Dist. Kutch. The said permission was refused as per the decision dated 29-6-1988. Thereafter, it appears that ultimately the petitioner had applied again and as per the order dated 5.11.1990, permission was granted and the lay out plans were approved.

2. It is the case of the petitioner that as per the said lay out plans about 85 plots were shown in the lay out plans. Thereafter, the petitioner applied for revised permission of the lay out plans as per application dated 16.2.1998 and the same also came to be approved and permission was granted as per the order dated 29.3.1998 by Taluka Development Officer. As per the said revised lay out plan as per the petitioner, ten additional plots were included in the lay out plans. Against the said decision of approval of revised lay out plans, respondents No.1 and 2 herein preferred revision before the State Government under Section 211 of the Bombay Land Revenue Code (hereinafter referred to as the "Code").

3. Upon hearing Mr.Dagli, learned Counsel for the petitioner, Mr.Vora, learned Counsel for respondents No.1 and 2, Mr.Jaswant Shah, learned Counsel for respondents No.3 and 4, Mr.Gajendra Singh for Mr.Munshaw, learned Counsel for respondent No.5 and Mr.Dipen Desai, learned AGP for respondent No.6, it appears that it was submitted by the petitioner herein who was opponent in the revision before the State Government that out of the land in question, which is included in the revised lay out plan, certain plots are already sold by the registered sale deed and the possession of the same is also handed over. There is no dispute on the point that those persons, who have purchased the plot forming part of revised lay out plans (qua additional plots) were not impleaded as parties by the petitioner before the State Government respondents No.1 and 2 herein. It appears that the State Government in the proceedings of the revision without considering the said aspects has proceeded without examination of the merits of the case on the ground that there was no authority with the Taluka Panchayat and has ultimately allowed the revision. Under the circumstances, the petitioner has approached this Court by preferring this petition.

4. As observed earlier, since there is no dispute on the point that certain plots were already sold by the petitioner. Therefore, they were required to be impleaded as party in the proceedings of the revision before the State Government. It is well settled that the

proceedings of revision under Section 211 of the Code are quasi judicial in nature and, therefore, while exercising power under Section 211 of the Code principles of natural justice are required to be followed. As the holders of the plots, who have purchased the land in question were not pleaded as parties and they were not heard, the impugned order passed by the State Government deserves to be quashed and set aside on the ground on non-observance of principles of natural justice and it is further required to direct the original petitioner before the State Government to implead the purchasers of the plots in question on the basis of the declaration which may be submitted by the petitioner herein and thereafter to decide the revision in accordance with law.

5. In view of the aforesaid the impugned order dated 21.11.2003 passed by the State Government (Annexure "G") is quashed and set aside with the further directions that the petitioner herein, who was opponent in the revision shall give the details of the plots which are already sold by him to third parties and the Secretary before whom the revision is pending shall direct the petitioner therein to join those purchasers as party respondents and after giving opportunity of hearing, appropriate, decision shall be rendered in accordance with law, as early as possible, preferably within a period of six months from the date of receipt of the writ of this Court. Until the State Government finally decides the revision application as per the above referred order, the petitioner herein shall not transfer or alienate the additional plots, which have come into existence as per the revised lay out plans.

6. It is made clear that all contentions shall remain open before the State Government to both the sides.

7. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

29-11-2004 (Jayant Patel, J.)

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